BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

JUN 11 1996

In the Matter of	
Implementation of the Telecommunications Act of 1996:	**CC Docket No. 96-115**
Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information	

DOCKET FILE COPY ORIGINAL

COMMENTS OF SBC COMMUNICATIONS INC.

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Table of Contents

SUMMARY[1]

The Commission should first confirm that the same CPNI rules will apply to all telecommunications carriers. Congress declined to create any exception to its statutory directive, and no privacy or competitive justification exists to engraft such an exception onto the statute.

The Commission's recognition of each provider's need to further advance "an integrated package" of telecommunications service offerings signals the proper approach to implementing the portions of Section 222 relating to permissible CPNI use. However, the Commission's proposed interpretation of the statute is unduly narrow. An alternative would better reflect the marketplace now and in the future, while preserving the balance Congress struck. Section 222(c)(1)(A) should be interpreted to permit a telecommunications carrier to use CPNI for the purpose of marketing and providing various service offerings comprising an integrated telecommunications service package. Alternatively, Section 222(c)(1)(B) should be interpreted to allow such use. In any event, Section 222(c)(1)(B) should be interpreted to allow CPNI use in connection with the installation, maintenance and repair of any type of telecommunications service and of information and enhanced services and CPE.[2] Affiliated telecommunications carriers should be allowed to share CPNI as well.

Where CPNI use is not specifically permitted under Section 222(c)(1)(A) or (B), the customer should be notified of his or her CPNI rights by means of a one-time bill page message or insert. The notification should fairly summarize a customer's CPNI rights and advise that the customer should contact the carrier to restrict the carrier's use of the customer's CPNI. Unless the customer

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[1] All abbreviations used herein are referenced within the text.

[2] Information services and enhanced services are defined quite similarly. Compare 47 U.S.C. § 153(20) with 47 C.F.R. § 64.702(a).

were to contact the carrier thereafter to indicate an election to restrict, the carrier would be free to use the CPNI for any legitimate business purpose indicated in the notification.

The Commission should not stray from the statute's provisions regarding aggregate CPNI by requiring LEC notification to others "prior to" use by the LEC of aggregate CPNI. Such a requirement would be wholly inappropriate and was neither mandated nor authorized by Congress.

Because Congress chose not to preserve the Commission's pre-existing Computer III regulatory requirements relating to CPNI, those requirements should be regarded as no longer appropriate, at least under the rubric of Computer III. In any case, any pre-existing requirements which remain applicable to BOCs should be made applicable to all telecommunications carriers

Section 222 treats subscriber list information with enough detail by Section 222(e) that only minimal interpretation is required. Importantly, however, the Commission should allow telephone exchange service providers and directory publishers the freedom to continue to enter into privately negotiated agreements regarding such information (consistent with other duties placed on carriers under the Act), and should not prescribe rules which are not now necessary and likely will never prove necessary.

A customer's approval under Section 222(c)(1) should not extend to the matters discussed by the Commission regarding alarm monitoring services marketing. More detailed regulations to ensure compliance are not required at this time.

Finally, it may not be necessary for the Commission to make any determination regarding the potential preemption of otherwise conflicting state laws. To the extent that the Commission does so, however, it would be more appropriate that it preempt only those laws more restrictive of carriers' use of CPNI, and not otherwise.

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Information and Other Customer	)	
Information	)	

COMMENTS OF SBC COMMUNICATIONS INC.

SBC Communications Inc. ("SBC"), by its attorneys, and on behalf of its subsidiaries, hereby offers these comments in response to the Commission's Notice of Proposed Rulemaking[1] in the above-referenced docket, implementing and interpreting those portions of the Telecommunications Act of 1996[2] relating to Customer Proprietary Network Information ("CPNI") and other customer related information.[3]

The telecommunications marketplace is changing, and those changes impact the appropriate use of CPNI. Customers now expect, and carriers are moving to provide, integrated telecommunications service offerings in a "one-stop shopping" environment. The composition of telecommunications service packages changes as often as the needs of various consumer segments change and as telecommunications carriers enter new markets. In addition, different technologies

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[1] FCC 96-221, released May 17, 1996.

[2] Pub. L. No. 104-104, 110 Stat. 56 (1996), codified at, 47 U.S.C. §151 et seq. (the "Act").

[3] Section 702 of the Act, adding Section 222, 47 U.S.C. § 222.

(e.g., wireline and wireless) are increasingly regarded as complementary parts of the telecommunications service provided to customers. Section 222 of the Act, Congress' only treatment of the subject of telecommunications CPNI, reflects a careful balancing of consumer privacy and competitive interests. These marketplace and policy considerations favor an interpretation of Section 222 that will permit use of CPNI in an efficient, flexible way -- one that will satisfy the service demands of customers, while preserving the balance between privacy and competitive interests struck by Congress. The comments submitted herein, if adopted by the Commission, would permit CPNI use in a manner supportive of all of these considerations.

I. THE COMMISSION'S RULES INTERPRETING THE ACT'S CPNI PROVISIONS SHOULD APPLY TO ALL TELECOMMUNICATIONS CARRIERS.

The NPRM is unclear whether the Commission intends for its CPNI rules to apply equally to all telecommunications carriers that receive or obtain CPNI by virtue of their provision of telecommunications service. However, the Act is unambiguous: Section 222(c)(1) obligations apply to any telecommunications carrier receiving or obtaining CPNI. Consumers' legitimate privacy expectations and considerations of competitive equity likewise support Congress' mandate. The Commission should find that no carrier or class of carriers owes any less statutory obligation than any other carrier or class of carriers.

Congress entitled Section 222(c)(1) "Privacy Requirements For Telecommunications Carriers," and expressly imposed the obligations of that subsection on all such providers. The term chosen by Congress -- "telecommunications carrier"-- means "any provider of telecommunications services," except telecommunications service aggregators. See, 47 U.S.C. Section 153(44). The

language of Section 222(c)(1) alone precludes any application of its terms to fewer than all of those providers encompassed by Section 153(44).

Congress could have narrowed subsection (c)(1) to encompass fewer than all carriers, but decided not to do so. For example, Congress declined to use the narrower term "local exchange carrier" (separately defined at 47 U.S.C. Section 153(26)), determining instead to extend CPNI obligations to more than those engaged in the provision of telephone exchange service or exchange access. Where it determined service provider distinctions to be appropriate, Congress acted. For example, it imposed certain "subscriber list information" obligations only upon a telecommunications carrier "that provides telephone exchange service." 47 U.S.C. Section 222(e). Similarly, Section 222(c)(3) provides that a telecommunications carrier which is also a "local exchange carrier" may use aggregate customer information for purposes other than those stated in Section 222(c)(1) provided certain conditions are met. In contrast, Congress has decided that all telecommunications carriers should be subject to the overall CPNI requirements stated in Section 222(c)(1). The Commission should not modify that coverage.

Privacy and other consumer considerations also strongly favor application of Section 222 to all telecommunications carriers. The Commission previously concluded that CPNI requirements are in the public interest because they are intended to protect legitimate customer expectations of confidentiality regarding individually identifiable information. NPRM, ¶ 4. This conclusion is not provider-specific. To the extent that consumers have legitimate privacy interests in CPNI, the legitimacy of those interests does not vary based on the company from whom they receive telecommunications service. Moreover, customer confusion would surely ensue if only some telecommunications carriers providing them service were obligated to abide by the Commission's

rules. A consumer's expectations should be respected by all companies with which the consumer does business.

Competitive considerations also require that Section 222 be applied to all carriers. In fact, the Commission correctly notes that the Act itself reflects a scheme that appropriately balances competitive and consumer privacy interests in CPNI. NPRM, ¶16. Congress has struck the balance, and the Commission need not engage in any rebalancing. The Commission certainly should not be tempted to conclude that the Act merely prohibits "established" providers from using CPNI to facilitate their entry into new markets, NPRM, ¶ 24 The Act does not reflect any such intention.

The Commission should acknowledge that interexchange carriers ("IXCs") (and other carriers such as competitive access providers ("CAPs") and cable companies) are no less interested in using CPNI than are BOCs. Such carriers intend to become full service, one-stop shopping providers, and they intend to use CPNI collected in the long distance market to further marketing of other offerings. MCI, for example, has made its "one-stop shopping" intentions clear in unveiling "a service that packages [a] wide range of offerings to consumers."[4] CPNI gathered from MCI's current telecommunications service offerings would no doubt be very valuable in facilitating that intention. Competitive considerations require that the Act's CPNI obligations are evenhandedly applied to all telecommunications carriers. Importantly, evenhanded application will neutralize any perceived competitive imbalances.[5]

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[4] Wall Street Journal, April 30, 1996, at p. B9, col. 2 (Attachment A). The MCI One package of offerings clearly is regarded as a single "service" by MCI. Id.

[5] The Texas legislature has likewise recently determined that in the event that the Federal Communications Commission no longer preempts a state's authority to adopt inconsistent CPNI (continued...)

To the extent that the Commission concludes that all telecommunications carriers must establish safeguards to protect against unauthorized access to CPNI, the specific safeguard requirements should likewise be made applicable to all telecommunications carriers. NPRM, ¶¶ 35, 36. Given that Congress has declined to direct the Commission to engage in a rulemaking to design such safeguards, and given the differing organizational structures and sizes of various telecommunications carriers, the Commission should not specify the precise safeguards required to be implemented. Precise safeguards should not be specified unless a material dispute arises regarding the efficacy of safeguards employed by telecommunications carriers.

II. A BROADER INTERPRETATION OF THE TERM "TELECOMMUNICATIONS SERVICE" WOULD REFLECT THE ACT'S CPNI PROVISIONS AND WOULD STRIKE AN APPROPRIATE BALANCE AMONG PRIVACY, COMPETITIVE AND OTHER CONSIDERATIONS

The NPRM suggests that Section 222(c)(1)(A) merely authorizes use of CPNI obtained from the provision of a "particular" telecommunications service solely to provide "the" telecommunications service. Id. at ¶¶ 20, 21. Elsewhere the NPRM suggests that the statute may not reasonably be read to permit use of CPNI derived from "one" telecommunications service to market "any other telecommunications service." NPRM, ¶¶ 20, 24. However, the Commission's suggestions represent an overly narrow interpretation of the statute, appear to be based on inconsistent reasoning, and do not strike the appropriate balance between privacy, competitive and customer concerns that would be achieved by a broader, more balanced, interpretation.

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[5](...continued)
rules, the Public Utility Commission of Texas will institute a proceeding regarding the appropriate use of CPNI "by all telecommunications utilities, provided that any rule, policy or orders adopted by the commission may not be discriminatory in its applications to telecommunications utilities...." Tex. Rev. Civ. Stat. Ann. Art. 1446c-0, § 3.501(c)(2) (West Supp. 1996) (emphasis added).

Section 222(c)(1) provides that:

> Except as required by law or with the approval of the customer, a telecommunications carrier that receives or obtains [CPNI] by virtue of its provision of a telecommunications service shall only use, disclose, or permit access to individually identifiable [CPNI] in its provision of (A) the telecommunications service from which such information is derived, or (B) services necessary to, or used in, the provision of such telecommunications service, including the publishing of directories.

Integral to a proper interpretation of this statute is assignment of the correct meaning to the term "telecommunications service."

The definition of "telecommunications service" speaks in terms of the "offering" of "telecommunications" -- the transmission between or among points specified by the user. 47 U.S.C. §153(46). The terms "telecommunications service" and "telecommunications" are, therefore, provider-neutral, distance-neutral, technology-neutral and, most importantly, user or customer focused. The terms do not refer to specific types or categories of service, but rather, leave those matters to a user's choosing.

As the NPRM appears to suggest, a proper view of the scope of the term "telecommunications service" should turn on whether service offerings are made by a telecommunications carrier "as part of an integrated package." NPRM, ¶ 22. This construction is consistent with the statutory definition of "telecommunications service" and is also consistent with the manner in which carriers offer telecommunications service to the public -- as a combination of discrete offerings constituting telecommunications service packages.

Contrary to this basic approach, however, the NPRM unnecessarily carves out "traditional" service distinctions that even the Commission admits it has not previously employed. NPRM, at ¶ 22 at n. 57 (noting that "[t]he Commission has not traditionally applied the interLATA

and intraLATA distinctions."). Moreover, such distinctions are not reflected in the language of Section 222 and do not reflect emerging competitive trends. "Traditional" service distinctions will soon be (if they are not already) outpaced by telecommunications carriers' ever-changing mix of service offerings that comprise an integrated package, offered by providers of both wireline and wireless technology. The Commission's reliance on "traditional" service and technological distinctions would cause its rules to soon become static and inflexible.

Finally, as noted in Section I., infra, the language of Section 222 does not support the Commission's view that the intent of the Act is to prohibit "established" carriers from using CPNI to facilitate their entry into new telecommunications services without prior customer authorization. NPRM, ¶ 24. Section 222(c)(1) is neither predicated on "traditional" or "new" service distinctions, nor limited to "established" telecommunications service providers.

The Commission's emphasis on the importance of telecommunications packages is correct and is in keeping with the language of Section 222(c)(1)(A). A fair reading of Section 222(c)(1)(A) permits CPNI derived from the provision of telecommunications service to be used in connection with any telecommunications service offering made by the carrier, whether made singly for the "user's choosing" or in combination with other offerings comprising an integrated telecommunications service package.

Conversely, Section 222(c)(1)(B) prohibits use of CPNI for any non-telecommunications service purpose, unless the service is necessary to, or used in, the provision of telecommunications service (or unless the customer approves) The term "telecommunications" does not appear before the phrase "services necessary to, or used in, the provision of such telecommunications service...," appearing at Section 222(c)(1)(B). Because clause (B) does not refer

to "telecommunications" at all, the Commission's narrow interpretation of the term "telecommunications service" inexplicably leaves other telecommunications services unaddressed by Section 222. Meaning must be given to both of clauses (A) and (B) in a way that would provide substance to the concept of "integrated packages" referred to by the Commission, NPRM, ¶ 22.

The Commission has observed that one-stop shopping and packaging of telecommunications service offerings are efficient and in the public interest.[6] Denying carriers the ability to use information in a way that would foster such benefits would hinder the ability of carriers to meet their customers' integrated service demands. Under the Commission's proposal, customers' expectations would be frustrated by artificial barriers placed on one-stop telecommunications service offerings.

Similarly, consumers' legitimate privacy expectations would be met and preserved by permitting use of CPNI for one-stop shopping. As the Commission has previously concluded, a solicitation or other contact from one with whom a person has already voluntarily conducted business

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[6] In re Applications of Craig O. McCaw, Transferor, and American Telephone and Telegraph Company, Transferee, For Consent to Transfer of Control of McCaw Cellular Communications, Inc., and Its Subsidiaries, File Nos. ENF-93-44 and 05288-CL-TC-1-93. Memorandum Opinion and Order on Reconsideration, 10 FCC Rcd. 11786, 11795-96, paras. 15-16 (1995) ("We believe that the benefits to consumers of 'one-stop shopping' are substantial.... The ability of a customer, especially a customer who has little or infrequent contact with service providers, to have one point of contact with a provider of multiple services is efficient and avoids the customer confusion that would result form having to contact various departments within an integrated, multi-service telecommunications company.... One-stop shopping promotes efficiency and avoids customer confusion."); see also, In re Amendment to Sections 64.702 of the Commission's Rules and Regulations (Third Computer Inquiry), Memorandum Opinion and Order on Reconsideration, 3 FCC Rcd. 1150, 1162, para. 97 (1988)("To the extent that the BOCs use CPNI to identify certain customers whose needs are not being met effectively and to market an appropriate package of enhanced and basic services to such customers, customers would be benefited.")

does not adversely affect that customer's privacy rights.[7] It is highly unlikely that consumers will object to a provider's use of CPNI in a way that makes a contact fruitful and productive for both parties. In the rapidly evolving telecommunications service markets, proper analysis of customer needs and desires is required, and best occurs where available information is used to the customer's advantage.[8] Many companies, including IXCs, routinely make such contacts with their customers to ensure that they receive the best services for their evolving telecommunication service needs.

Finally, telecommunications service offerings will continue to be made to customers who are indifferent to the technology used (i.e., wireline vs. wireless) and whether the services are offered solely by one carrier or affiliated carriers. Greater convenience to the customer will result from CPNI use that is not limited by artificial distinctions such as the means of technology or the fact that the multiple companies may address themselves to the customer through a single-point-of-contact affiliate. To the extent that these realities are not reflected in the Commission's CPNI rules, customers' telecommunications service needs will be frustrated and carriers' growth into new markets will be unnecessarily hindered. The Commission should attempt to avoid these results.

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[7] In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, CC Docket No. 92-90, Report and Order, 7 FCC Red. 8752, 8770, para. 34 (1992) (also concluding that "such a solicitation can be deemed to be invited or permitted by a subscriber in light of the business relationship").

[8] To the extent that privacy interests are grounded in state law, it is noteworthy that recent Texas legislation allows use of CPNI for the sale, provision and billing and collection of telecommunications and enhanced services, and further allows CPNI to be provided to an affiliated telecommunications provider. Tex. Rev. Civ. Stat. Ann. art. 1446c-0, § 3.501(b) (West Supp. 1996). To SBC's knowledge, no complaints regarding this authority have been filed with either this Commission or the Public Utility Commission of Texas.

III. CONSISTENT WITH PRIOR COMMISSION PRACTICE, APPROVAL SHOULD BE INFERRED UPON NOTIFICATION TO A CUSTOMER WHO DOES NOT SEEK THEREAFTER TO RESTRICT CPNI USE.

Section 222(c)(1) allows use of CPNI "with the approval of the customer."[9] However, the Act neither specifies the procedures that carriers must use to obtain the customer's approval, nor the form of approval required[10] (e.g., oral or written). NPRM, ¶ 27. The Commission should adopt a two-step approval process that would be both easy to implement and verify, yet consistent with the public's interest in privacy

The Commission's tentative conclusion that carriers seeking customers' approval for CPNI use should notify them of their right to restrict access to their CPNI is correct. NPRM, ¶ 28. Although oral notification given simultaneously with a carrier's attempt to seek approval would be the least burdensome, legally acceptable method, a requirement that carriers intending to use CPNI

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[9] However, a carrier's CPNI use for a purpose within Section 222(c)(1)(A) or (B) requires no customer approval. Congress understood that customer approval impliedly stems from the relationship between a customer and the company with whom he or she does business. This concept is consistent with the current CPNI rules and compromises no legitimate expectations of privacy. Similarly, the pre-existing relationship suggests that the approval process with respect to services outside of Section 222(c)(1)(A) and (B) should be flexible and not burdensome.

[10] The Act does not require that customer approval be written. While Section 222(c)(2) provides for carrier disclosure of CPNI to a person designated by the customer only "upon affirmative written request by the customer," Congress chose not to impose this requirement within Section 222(c)(1) regarding carriers' own use of CPNI. Moreover, such a mechanism would merely resurrect the "prior authorization" requirement, long since rejected by the Commission as hindering carrier efficiency and consumer benefits. NPRM, ¶16. See also, In the Matter of Computer II Remand Proceedings: Bell Operating Company Safeguards and Tier 1 Local Exchange Company Safeguards, CC Docket No. 90-623, Report and Order, 6 FCC Rcd. 7571, 7610, n. 155

Under the foregoing approach, Section 222(c)(1) (regarding authorizations generally) and Section 222(d)(3) (allowing a "restricted CPNI" customer to authorize CPNI usage for the duration of an inbound call) may be fairly reconciled with Section 222(c)(2) (regarding CPNI disclosure to a customer designee). Congress imposed an "affirmative written request" requirement only in the last instance, not in the first two, and these sections should be implemented as such.

provide a one-time bill message insert notification is appropriate. Under existing Computer III rules, AT&T must provide notification only by means of a one-time billing insert,[11] and complaints arising from AT&T's implementation of this requirement are evidently rare.

The first step of the process, notification, should simply and succinctly summarize the customer's statutory CPNI rights. The notification should include appropriate references to use of CPNI by affiliated entities. The notification should also provide that use of the customer's CPNI by the carrier(s) will be permitted unless the customer requests, orally or in writing, that such use be restricted. A customer's request that CPNI be restricted, or lack of such request, would be the second step of the approval process.[12]

This time-tested process, consistent with the restrictions placed upon AT&T in Computer III offers the dual advantages of being more specific and more verifiable than oral notification generally and sufficient to inform customers of their CPNI rights. Providing this level of detail should also mean that, should a customer choose not to contact the carrier to restrict use of his or her CPNI, CPNI use would be deemed approved without any further action on the part of the carrier or its customer. Given the suggested scope of notification, the Commission should not

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[11] NPRM, ¶6; Computer III Remand Proceedings: Bell Operating Company Safeguards and Tier 1 Local Exchange Company Safeguards ("BOC Safeguards Order"), 6 FCC Rcd. 7571, 7636, para. 130 (1991), vacated in part and remanded, California v. FCC, 39 F.3d 919 (9th Cir. 1994), cert. denied, 115 S. Ct. 1427 (1995).

[12] In response to Texas legislation and the rules of the Public Utility Commission of Texas, SWBT issued bill message notice in that state in 1995. Similar notices are also being issued in Arkansas, Kansas, Missouri and Oklahoma, on both a wireline and wireless basis.

require the added burden of, for example, a postcard which the customer could sign and return to the carrier to authorize CPNI use. NPRM, ¶ 29.[13]

Carriers' records should sufficiently document the provision of a bill message or insert and should also sufficiently document any customer contact to request CPNI restriction. Beyond that, however, more burdensome documentation is not needed and would not be cost-effective.

Under the foregoing approach, outbound telemarketing programs of the type described by the Commission (NPRM, ¶30) would be unnecessary. However, programs to obtain oral approval from customers for use of their CPNI are permitted under the Act. Carriers could sufficiently manage such programs so that the implementation of oral notification of customers' CPNI rights, and appropriate notation of customer records, could easily be ensured. Congress did not see fit to impose an "affirmative written request" requirement in this section and no such requirement should be imposed.

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[13] Of course, such notification to all customers is still more extensive than notification limited to multiline business customers only, an approach which was taken to reduce the expense of the notification by focusing it on limited customers. In re Amendment to Sections 64.702 of the Commission's Rules and Regulations (Third Computer Inquiry), CC Docket No. 85-229, Report and Order, 2 FCC Rcd 3072, 3096, para. 164 (1987).

IV. A TELECOMMUNICATIONS CARRIER SHOULD BE PERMITTED TO USE CPNI FOR INSTALLATION, MAINTENANCE AND REPAIR WITHOUT FIRST SECURING CUSTOMER APPROVAL.

Section 222(d)(1) allows carriers to use, disclose, or permit access to CPNI "to initiate, render, bill and collect for telecommunications services." Although the Commission's interpretation of the term "telecommunications service" in Section 222(c)(1) is incorrect in scope, the exception stated in subsection (d)(1) nevertheless permits carriers to use CPNI to perform installation, maintenance and repair for any telecommunications service to which the customer subscribes without first securing the customer's approval.

First, Section 222(d)(1) is stated in unequivocal terms and makes no explicit reference to any need for customer approval. Second, Section 222(d)(1) expressly disavows any customer approval requirement through its provision that "[n]othing in this section prohibits a telecommunications carrier . . ." from using CPNI consistent with the exceptions. Third, to the extent that marketing new service offerings is the context in which privacy and competitive concerns arise, Section 222(d)(1) recognizes that no such concerns exist in the context of installation, maintenance and repair.

V. LOCAL EXCHANGE CARRIERS SHOULD NOT BE REQUIRED TO NOTIFY OTHERS REGARDING THE AVAILABILITY OF AGGREGATE CPNI "PRIOR TO" USING SUCH CPNI.

The Commission correctly notes that Section 222(c)(3) of the Act allows LECs to use aggregate CPNI for purposes other than that allowed by Section 222(c)(1) so long as the aggregate CPNI is made available to others on a reasonable and discriminatory basis. However, nothing suggests or warrants engrafting to the statute an additional requirement that LECs must notify others

of the availability of aggregate CPNI "prior to" using the information themselves, as suggested by the NPRM. NPRM, ¶ 37. The carriers' provisioning of aggregate information "upon request," as has been the case historically, and is reflected by the statute, is sufficient.

Compelling LEC notification to others "prior to" their own use would unfairly require that they signal their marketing plans and strategic directions. The notification itself would provide competitors an unfair advantage, as their statutory right is to the information and no more.

Equally as important, Congress saw fit not to impose any such notification requirement. Instead, it chose to merely retain pre-legislation obligations arising under the Computer III regime. See, NPRM, ¶ 37. For the Commission to depart so dramatically from the text of the Act would result in far more than interpretation or implementation of the Act. The Commission should not exceed its reasonable interpretive authority in this regard by inserting words so fundamental as "prior to."

VI. COMPUTER III CPNI REQUIREMENTS THAT ARE MORE RESTRICTIVE THAN SECTION 222 ARE NO LONGER APPROPRIATE.

The NPRM seeks comments on which, if any, of the Commission's Computer III CPNI rules may no longer be necessary as a result of new Section 222. NPRM, ¶ 41. The Act is clear: none of the pre-existing Computer III CPNI rules should remain in force. However, if these rules are made applicable to any telecommunications carrier, then they should be made applicable to all telecommunications carriers.

As the Commission notes, the Act's requirements for maintaining the confidentiality of CPNI became "effective immediately upon enactment" for all telecommunications carriers. NPRM, ¶8. The NPRM also correctly observes that the Act establishes a "specific statutory scheme

... in a way that balance[s] both competitive and consumer privacy interest with respect to CPNI." Id., at ¶16. Neither the Act generally nor Section 222 specifically incorporates the Commission's pre-existing Computer III CPNI rules. Congress' specific direction regarding CPNI and its decision to decline to incorporate the pre-existing rules into the new CPNI provisions should be respected.

To the extent that continuing any pre-existing CPNI rules are consistent with telecommunications carriers' obligations under Section 222 of the Act, such regulations should continue, but only as rules promulgated pursuant to Section 222, not the Computer III regime. For example, under the Commission's Computer III rules, the BOCs have been required to "abide by a request" from any customer to restrict his or her CPNI. NPRM, ¶5. All carriers are now obligated to respect a customer's request to restrict use of his or her CPNI.

Finally, to the extent that any less than all telecommunications carriers have been made subject to the pre-existing rules, the Act removes that imbalance. Instead, the Act calls for an evenhanded application of the law to all telecommunications carriers which the Commission should respect. If the Commission concludes that any of its pre-existing rules remain appropriate in light of Section 222, then those rules should be made applicable to all carriers.

VII. ONLY MINIMAL REGULATIONS ARE NECESSARY TO ENSURE CONVEYANCE OF SUBSCRIBER LIST INFORMATION TO DIRECTORY PUBLISHERS.

Section 222(e) of the Act provides that a telecommunications carrier providing "telephone exchange service" must provide subscriber list information ("SLI") on a "timely and unbundled basis, under nondiscriminatory and reasonable rates, terms, and conditions, to any person upon request for the purpose of publishing directories in any format." SLI, defined by Section 222(f)(3), includes "the listed names of subscribers of a carrier and such subscribers' telephone

numbers, addresses, or primary advertising classifications." With minor exceptions, the statutory obligations imposed by these provisions need not be further explicated. Further, providers of telephone exchange service and directory publishers should remain free to enter into voluntarily negotiated agreements for the licensing of listings, since this is the most sound means to comply with the Act.

The NPRM correctly proposes that the requirements of Section 222(e) apply not only to local exchange carriers, but also to any telecommunications carrier, including an IXC or cable operator, providing telephone exchange service. NPRM, ¶ 43. In Texas, for example, several IXCs and Time Warner, a cable operator, have been certificated to provide local exchange service. Should directory publishers not be provided SLI from other similarly situated entities, the public interest could be seriously harmed because available directories would be incomplete and of little use to consumers. Without subscribers' access to current and accurate SLI, the overall value of telephone exchange service would be diminished.

The NPRM also seeks comments on what regulations, if any, are necessary to clarify the types or categories of SLI that should be provided. NPRM, ¶ 44. This subject, however, is largely already addressed by the words of the Act. The Act clearly requires that the subscriber's listed name, address and telephone number be made available to directory publishers. No interpretation of these commonly understood terms is necessary.

The Act does not, however, specify what is meant by the term "primary advertising classifications." The Commission should flesh out this term by defining it to mean any advertising classification that may be assigned by a carrier at the time of establishment of telephone exchange service, including (but not limited to): (1) identification of the service as either residential or

commercial (i.e., business); (2) the Standard Industrial Classification ("SIC") code,[14] if known; and (3) the primary classified advertising directory "heading" chosen by the subscriber, if any.

Not all carriers assign a primary advertising classification. In any event, the Commission should require only that, to the extent that a telephone exchange service provider assigns such classifications or codes when telephone service is established, the provider should make the classifications available to others for the purpose of publishing directories. In this connection, the Commission correctly observes that the term "primary advertising classifications" in Section 222(e) is used differently than the term "advertising" in Section 274(h)(2)(i)[15] and, therefore, that subscriber list information does not fall within the definition of electronic publishing. NPRM, ¶ 44. Certainly, the assignment of an advertising classification by the provider of telephone exchange service cannot be equated to advertising by the subscriber.

No Commission-prescribed regulations or procedures are necessary to ensure that SLI is provided on a "timely and unbundled[16] basis, under nondiscriminatory and reasonable rates, terms and conditions." The needs of directory publishers vary widely For example, what is "timely" to one publisher may be too soon or too slow for others. Directory publishers' views differ on the meaning

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[14] The SIC is the statistical classification standard underlying all establishment-based Federal economic statistics classified by industry. It classifies establishments by type of activity in which they are engaged.

[15] Webster's Third New International Dictionary defines "advertising" to mean "the action of calling something (as a commodity for sale or a service offered or desired) to the attention of the public, especially by means of printed or broadcast paid announcements." Webster's Third New International Dictionary, 1981 ed., at p. 31.

[16] Should the Commission determine, however, to interpret the term "unbundled," then the term should mean "separated from the whole," indicating that SLI should be available to publishers based on different selection criteria. For example, a publisher should be able to obtain SLI separately for residences or businesses, new or existing listings, listings by geographic area such as NXX or area code, or other criteria, so long as technically feasible and economically reasonable.

of "unbundled" and on the appropriate format for conveying SLI. For these and other reasons, the provision of SLI in the highly competitive publishing industry has historically been accomplished between the parties pursuant to voluntarily negotiated agreements. The Commission should continue to respect the parties' privately negotiated agreements perhaps only imposing on them the duty to negotiate in good faith. The Commission need not and should not create new rules or regulations governing such agreements.

Voluntary agreements should incorporate commitments that the person obtaining SLI pursuant to the Act will use it for the purposes related or ancillary to "publishing directories in any format." See, NPRM, ¶ 46. In this context, "publishing" would include compilation, production, publication and delivery of a directory, and sale of directory advertising to a customer. It would not be unreasonable for the telecommunications carrier to seek confirmation that the requesting party is in fact a bona fide directory publisher. Collectively, these are reasonable restrictions intended to protect the telecommunications carrier and its subscribers from abuse and indiscriminate use of listing information.

Accordingly, apart from perhaps interpreting the proper scope of the phrase "primary advertising classifications," the Commission generally should leave to the telecommunications carriers and directory publishers the actual task of reaching voluntarily negotiated agreements.

VIII. THE COMMISSION'S INTERPRETATION OF SECTION 275(D) REGARDING ALARM MONITORING SERVICES IS APPROPRIATE

Section 275(d) prohibits a local exchange carrier from recording or using "the occurrence or content of calls received by providers of alarm monitoring services for the purposes of marketing such services on behalf of such [LEC], or any other entity." The Commission's tentative conclusion that a customer's authorization under Section 222(c)(1) should not extend to any records concerning the occurrence of calls received by alarm monitoring providers, is correct. NPRM, ¶ 47. Further, pursuant to Section 275(d), a LEC should not be able to use information concerning the "content of calls" received by providers of alarm monitoring services.

However, the Commission need not specify the procedures LECs should develop in order to comply with Section 275(d). In the absence of any complaint of improper conduct, additional regulation is unnecessary.

Moreover, the costs of complying with specific regulations would outweigh the benefits. First, security industry analysts estimate that at least 25% of residential alarm systems are not monitored (i.e., not connected to any communications network); these households would not be known to a LEC. The vast majority of the remainder utilize the switched network for alarm monitoring in a manner that makes their existence unknown to a serving LEC. Virtually the only customers that can be identified are those subscribing to an alarm circuit (i.e., a private line), but these are estimated to comprise less than 3% of the total number of existing monitored alarm services. The accounts of customers known to have an alarm system are properly CPNI marked and treated accordingly.

IX. PREEMPTION SHOULD ONLY BE USED WHERE NECESSARY TO PRECLUDE ENFORCEMENT OF MORE RESTRICTIVE STATE AND LOCAL LAWS.

The NPRM seeks comment on the extent to which Section 222 permits states to impose additional CPNI requirements. NPRM, ¶17. The NPRM further seeks comment regarding what aspects of state regulation of CPNI or other customer information would enhance or impede the federal purpose. Id.

Historically, the Commission has preempted only more restrictive state CPNI regulation. In keeping with this proper approach, and in light of the Court's decision in California v. FCC, 39 F.3d 919 (9th Cir.1994), cert. denied, 115 S. Ct. 127 (1995), the Commission should only preempt state laws only where they are more restrictive than Section 222 and the Commission's rules interpreting it. In California, the Court upheld the FCC's exercise of its preemption authority, reasoning that the FCC had shown that "conflicting state rules regarding access to CPNI would negate the FCC's goal of allowing the BOCs to efficiently develop a mass market for enhanced services for small customers." Id. at 933.

Conversely and consistently with the terms of Section 601(c) of the Act (which provides that the Act shall not be construed to modify, impair or supersede state or local law unless expressly so provided), those states which may have enacted statutes or promulgated rules allowing greater use of CPNI use than the FCC's own rules should continue to govern in the context of intrastate telecommunications service offerings. So, too, state statutes or rules which allow a form of customer approval that may be more flexible than that ultimately adopted by this Commission should likewise be permitted to stand.[17] In light of Congress, stated policy regarding preemption and

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[17] As noted earlier, the Texas Legislature has recently determined that telephone companies may use a customer's CPNI for the sale, provision and billing and collection of telecommunications and (continued...)

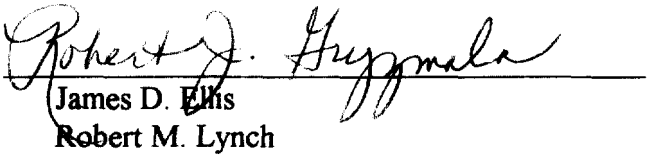
the absence of a contrary provision within Section 222 of the Act, the Commission should defer to those states which have less restrictive CPNI rules for intrastate services than those the Commission may ultimately implement.

X. CONCLUSION

Section 222 of the Act represents Congress' only declaration of the law governing telecommunications carriers' use of CPNI. While the law should be applied equally to all such carriers, the scope of the term "telecommunications service" is sufficiently broad to reflect marketplace realities, yet still respect the balance of the privacy, competitive and customer concerns struck by Congress. SBC respectfully requests that the Commission adopt an appropriate scope of the phrase "telecommunications service," appropriate notification and approval requirements, and other appropriate proposals noted herein.

Respectfully Submitted,

SBC COMMUNICATIONS INC.

By 

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[17](...continued)
enhanced services, and further, that such CPNI may be provided to an affiliate telecommunications provider. See, note 7, supra. In addition, rules of the Public Utility Commission of Texas currently provide that a customer's "approval" for certain other uses of CPNI is allowed upon notification to the customer of his or her CPNI rights, where the customer has not thereafter requested the company to restrict such use. PUC Substantive Rule §23.57(e).